

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-02/12-96
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, changing his household composition from three people to one person. The petitioner disagrees with the decision to remove his children as part of his household after the Department's determination that petitioner is not the custodial parent under the Food Stamp (3SquaresVT) rules.

The issue is whether the Department correctly determined household composition under the Food Stamp rules.

Procedural History

The petitioner asked for a fair hearing on or about February 9, 2012 based on a February 3, 2012 Notice of Decision closing petitioner's Reach Up Financial Assistance (RUFA) grant and reducing Petitioner's Food Stamps from \$526.00 per month to \$200.00 per month. The change in Food Stamps was caused, in part, by reducing the household from three people to one person.

A Fair Hearing was scheduled for March 15, 2012. The Department notified the Board that petitioner withdrew his fair hearing on or about March 15, 2012. The Board sent a confirmation letter to the petitioner who responded that he believed he was the custodial parent because of a new Child Support Order. It appeared that petitioner disputed the Food Stamp decision and the hearing was rescheduled and held on April 18, 2012. Petitioner does not dispute the closure of his RUFA benefits.

FINDINGS OF FACT

1. The petitioner is the father of two minor children.
2. On or about May 12, 2010, the Family Division of Superior Court entered an Order setting out shared physical parental rights and responsibilities (custody) for the children. Shared custody was divided 58 percent to the mother and 42 percent to petitioner. According to petitioner, there was a period of time in which he cared for the children in excess of 50 percent of the time but that changed after he sought help from the Office of Child Support and the children's mother insisted on compliance with the Court Order's custody division.

3. On or about November 2, 2011, a Child Support Order was entered. The mother's income was \$6,700.00 per month. Petitioner was unemployed and seeking Social Security Disability benefits. The Court found petitioner's income was \$780.00 per month. The Court ruled that the mother pay \$512.00 per month as child support after factoring in the shared custodial arrangement of 58 percent with mother and 42 percent with petitioner. Mother is responsible for health care coverage for the children.¹

4. On or about January 17, 2012, the petitioner informed the Department of the 58 percent/42 percent custody split and was orally informed that he would no longer be eligible for RUFA.

5. On or about February 3, 2012, the Department issued a Notice of Decision terminating RUFA effective February 15, 2012 and reducing Food Stamps from \$512.00 per month to \$200.00 per month. The Food Stamp decision was based on changing the household size from three to one and based on zero income for petitioner. The change in Food Stamps was effective as of March 1, 2012 and the amount was the maximum amount allowed under the regulations for a household of one.

¹ Petitioner has secondary health coverage for the children through Dr. Dynasaur.

6. During this time period, petitioner was approved for Social Security Disability benefits² in the amount of \$1,136.00 per month starting with March 2012 benefits. Due to the change in petitioner's income, the Department recalculated petitioner's Food Stamps and issued a Notice of Decision on or about February 8, 2012 reducing petitioner's Food Stamps to \$66.00 per month effective March 1, 2012.

7. Petitioner appeared in the Family Division on or about March 15, 2012. The Court issued an Interim Order incorporating the 58 percent/42 percent shared custody arrangement and ordering the mother to pay child support to petitioner in the amount of \$329.23 per month beginning March 1, 2012.³

ORDER

The Department's decision to change the household composition under the Food Stamp program is affirmed.

²Under Social Security rules, children's benefits are being paid for the children but the payments are presently being made to the mother.

³There are other financial issues to be determined between the parties by the Family Division at a later date. In addition, it is anticipated that the Department will recalculate petitioner's benefits based on the changes to his income.

REASONS

The Food Stamp program provides benefits to households. Food Stamp Manual § 273.2. The Food Stamp regulations define a household to include a parent "living with" their children. FSM § 273.1(a)(2)(i)(C).

The Board has grappled with cases in which the parents have shared custody of their children. In those cases, the Board has upheld the Department determination that the key issue is where the children eat the majority of their meals and/or spend the majority of their time. This stems, in part, from the lack of a mechanism in the regulations to pro-rate Food Stamps between more than one household. See Fair Hearing Nos. V-02/11-88, L-12/09-681, T-09/08-390, M-01/08-46, 14,929, and 6,345.

The Board has also noted that the Food Stamp regulations do not mention physical or legal custody or responsibility, and that household composition for Food Stamps can theoretically change on a month-to-month basis. See Fair Hearing Nos. T-09/08-390 and M-01/08-46.

In this case, the Family Court order is clear that the children's mother is responsible for providing for the children 58 percent of the time.

Petitioner points to the Court's Order that the mother pay child support to him as a basis for claiming he is the sole custodial parent. Petitioner misunderstands the child support laws, especially as those laws apply to shared custody arrangements.

The core purpose of the child support laws is to, the extent possible, provide the children with the lifestyle they would have if their parents remained together. 15 V.S.A. §§ 650 and 654. Shared physical custody is addressed at 15 V.S.A. § 657 as follows:

(a) . . . Each parental support obligation shall be determined by dividing the total support obligation between the parents in proportion to their respective available incomes and in proportion to the amount of time each parent exercises physical custody. The parental support obligations shall then be offset, with the parent owing the larger amount being required to pay the difference between the two amounts to the other parent.

In petitioner's case, the Court Order addresses the income disparity between the two parents and assigns support to petitioner to help equalize the difference between the households. The Order does not change the allocation of shared custody between the parties.

In the event petitioner's custody rights change so that he has more than 50 percent of shared custody or obtains sole

custody, petitioner can then ask the Department to add his children to the household.

Here, the Department's decision regarding the petitioner's household is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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